**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 1529 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE H.K.RATHOD**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**THE GUJARAT STATE ROAD TRANSPORT CORPORTION - Petitioner(s)**
**Versus**
**JAYESHBHAI RAMCHANDRA YADAV - Respondent(s)**

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**Appearance :**
MR RITURAJ M MEENA for Petitioner(s) : 1,
MR PRABHAKAR UPADYAY for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**

**Date : 03/05/2006**

**ORAL JUDGMENT**

This matter was fixed for consideration of interim relief. However, instead of considering the matter for interim relief, in the peculiar facts and

circumstances of the case, with the consent of the learned advocates for the parties, this matter is taken up for final hearing.

Heard learned advocate Mr. Rituraj Meena for petitioner and Mr. Prabhakar Upadhyay, learned advocate who is appearing for respondent. In this petition, petitioner is challenging the a ward made by the Industrial Tribunal, Bhavnagar in Reference (IT) NO. 55 of 2001 dated 10th June, 2005 wherein the Industrial Tribunal, Bhavnagar has allowed reference and has set aside the order of punishment made by the first party against the concerned workman in reference to charge sheet no. 8193 with a direction to the first party corporation to pay all consequential benefits with cost of Rs.500.00 to the workman.

During the course of hearing, it was submitted by the learned advocate Mr. Meena on behalf of the petitioner that the past record of the workman is bad, workman has committed number of defaults in past but that has not been taken into account by the Tribunal. He also submitted that the accident has occurred due to negligence and carelessness on the part of the workman

wherein one person has lost his life. Therefore, according to his submission, tribunal has committed gross error in setting aside the order of punishment. He has placed reliance upon the decision of apex court in case of Cholan Roadways Ltd. Versus G. Thirugnanasambandam reported in (2005) 3 SCC 241.

On the other hand, learned advocate Mr. Prabhakar Upadhyay appearing for workman has submitted that the tribunal was right in appreciating the evidence in departmental inquiry and in departmental inquiry, allegations made against workman have not been proved by legal evidence, therefore, tribunal was right in setting aside the order of punishment and for that, no error has been committed by tribunal and, therefore, there is no necessity of interfering with the award made by the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the tribunal. The tribunal has examined the matter after considering the evidence, oral as well as documentary led in departmental inquiry. Respondent was working as driver with effect from 24.8.1988. Accident took place on 15th June, 1992 on the

route between Palitana – Pingali. According to the report, ST Bus had dshed with the motor cycle and motor cyclist expired on the spot. Petitioner corporation has produced in all 29 documents before the tribunal but the past record was not produced by the petitioner before the tribunal. Legality, validity and propriety of the inquiry was not challenged by workman before the tribunal. Ultimately, either side has not led any o ral evidence before the tribunal. Thereafter, tribunal considered the submissions made by the learned advocates for the parties and came to the conclusion that looking to the record of departmental inquiry, no eye witness was examined, reporter was not eye witness. Tribunal has also observed that the statement was not recorded by the reporter on the spot, therefore, cannot submit any statement as a statement recorded by him. Tribunal has also observed that at page 4 of the Form regarding accident, remarks about accident have been given by the Stand In charge and therein, remarks are not of the reporter himself. Tribunal has also observed that at page 4 of Exh. 9, accident report, it has been reported that the reporter is agreeing with the remarks of the Stand In charge. The tribunal has also observed that in such circumstances, situation is not such wherein reporter is

submitting report after doing investigation by himself personally, not only that, it is not his say that the statement which he has not recorded was recorded in his presence. Tribunal has observed that the accident took place due to mechanical defect in bus as mentioned in the accident form Exh.9, page 4. Said defect was brought to the notice of the department by the driver while filling up the defect slip. That defect slip was not produced on record and ultimately tribunal considered that the Divisional Traffic Officer has also given opinion that for the said accident, motor cyclist as well as the ST Driver both are responsible, that report was accepted and on that basis, charge sheet was given by the same officer who has given opinion earlier against the respondent. Therefore, considering this aspect, the tribunal has come to the conclusion that the finding is not based upon any legal evidence and there was pre-decision taken by the Divisional Traffic Officer and, therefore, charge levelled against workman is not found to be proved, no eye witness was examined and therefore, there is no evidence on record to prove that the driver has committed misconduct of negligence and carelessness. Thereafter, punishment imposed by the competent authority confirmed by the reviewing authority has been set aside by the

Tribunal.

I have considered the reasons given by the tribunal. I have also considered the fact that no eye witness was examined in departmental inquiry. Past record was not produced before the tribunal, therefore, there is no question of consideration thereof by the tribunal. Learned advocate Mr. Meena has not been able to point out that the past record was produced and yet not considered by the tribunal.

I have also examined the decision of apex court in case of Cholan Roadways Ltd. Versus G. Thirugnanasambandam reported in (2005) 3 SCC 241, cited by the learned advocate Mr. Meena for the petitioner. According to my opinion, said judgment is not applicable to the facts of this case. In the case before the Hon'ble Supreme Court, principle of Res Ipsa Loquitor was taken into account which is not the situation in the case before hand. Therefore, that decision is not helpful to petitioner and not applicable to this case.

In view of the above discussion, tribunal has not committed any error while passing the award in question.

This Court is having very limited jurisdiction and it cannot interfere even if two views are possible. While exercising powers under Article 227 of the Constitution of India, this Court cannot act as an appellate court. This Court cannot interfere with the findings of fact recorded by the tribunal unless it is successfully demonstrated that such findings are perverse or contrary to record. In case before hand, learned advocate Mr.Meena has not been able to point out that the findings are contrary to record or perverse in nature. He has not been able to point out any infirmity and/or irregularity committed by the tribunal while recording such findings of fact.

Therefore there is no substance in this petition and the same is required to be dismissed. Consequently, this petition is dismissed. Rule is discharged. Interim relief granted earlier is vacated. No order as to costs.

(H.K. Rathod,J.)